

2

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE P.VI SHWANATHA SHETTY

WRIT PETITION No.12940/1998

Between :

1. Zubair Ahmed (major),
S/o Hussain Sab Pathan,
R/o Balakundri B.K.
Belgaum Taluk,
Belgaum District.

2. Ismail (major),
S/o Hussain Sab Pathan,
R/o Balekundri B.K.
Belgaum Taluk,
Belgaum District.

229
... Petitioners.

(By Sri.S.N.Hatti, Adv.,)

And:

1. The Asst. Commissioner,
Belgaum Sub-Division,
Belgaum.

2. The Deputy Tahsildar,
Hirebagewadi,
Belgaum Taluk.

3. Hyder Sab,
S/o Buddesab Pathan,
major, Occ. Agriculturist,
R/o Balekundri B.K.
Belgaum Taluk,
Belgaum Dist.

4. Ibrahim,
major, S/o Buddesab Pathan,

230

Occ. Agriculturist,
R/o Balekundri B.K.
Belgaum Taluk,
Belgaum District.

... Respondents.

(By Sri.Jagadish Patil for R-3 & 4
SriKotian Addl.GA for R-1 & 2)

This WP is filed under Articles 226 & 227 of the Constitution of India praying to quash vide Ann.B dt.24-3-98 passed by the Asst. Commr. Belgaum & etc.,

This WP coming on for prly. hg. this day, the Court made the following:-

O R D E R


Sri Kotian, learned Government Advocate is directed to take notice to Respondents-1 and 2.

2. In this petition, the petitioners have called in question the correctness of the order dated 24th March, 1998, a copy of which has been produced as Annexure-B, passed by the 1st respondent setting aside the order passed by the 2nd respondent entering the name of the petitioners in respect of half of the land which is the subject matter of dispute in this petition.



231

3. Having regard to the facts and circumstances of the case, I am of the view that this is not a fit case for interference by this court in exercise of its jurisdiction either under Article 226 or Article 227 of the Constitution of India against the order impugned. It is not in dispute that the occupancy right has been granted in the name of one Sri Buddesab Pathan who is the father of Respondents-3 and 4, and pursuant to the order passed by the Tribunal, Certificate of Registration was also granted in favour of said Buddesab Pathan. It is also not in dispute that subsequent to the grant of Certificate of Registration, the name of said Buddesab Pathan came to be entered in the revenue records and the said position continued till the order which has been set aside by the 1st respondent came to be passed by the 2nd respondent in the year 1996.



4. However, it is the case of the petitioners that on the basis that there had been partition in the family of the petitioners and Respondents-3 and 4 in the year 1996 and pursuant to the report given by the mother of the respondents-3 and 4 and pursuant to the said partition deed, the name of the petitioners came to be entered in respect of the lands in question.

5. Sri Jagadish Patil, learned counsel appearing for the respondents-3 and 4 seriously dispute that there was ~~no~~ partition in the family. He also submits that since the father of the respondents-3 and 4 alone was the tenant in respect of the land in question, the Tribunal had granted occupancy rights in his favour and as such the petitioners cannot claim any right in respect of the land in question. In this petition, it is not desirable to go into the respective claims of the parties in respect of

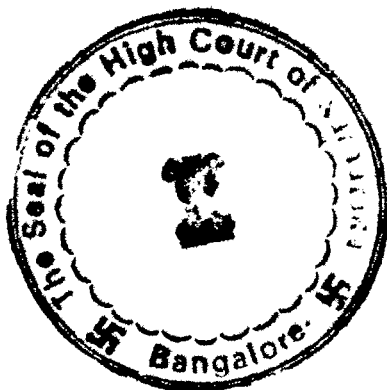
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237

land in question as the parties have remedy before the Civil Court to establish their claim. Even with regard to the entries, the parties can get their rights established by the Civil court as provided under the proviso given to Section-135 of the Land Revenue Act. Therefore, in the light of the discussion made above, I am of the view there is no merit in this petition. Accordingly, this petition is liable to be dismissed.

6. Accordingly, this petition is dismissed.

7. Sri Kotian, learned Government Advocate is given four weeks time to file his memo of appearance.



Sd/-
JUDGE